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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PARNELL COLVIN,

Plaintiff,

vs.

M.J. DEAN CONSTRUCTION, INC,

Defendant.

Case No. 2:20-cv-01765-APG-EJY

**DEFENDANT M.J. DEAN  
CONSTRUCTION, INC.'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Defendant M.J. Dean Construction, Inc. ("MJ Dean), by and through its attorneys of record, the law firm of Howard & Howard Attorneys PLLC, answers Plaintiff's First Amended FAC ("FAC") as follows:

1. Answering Paragraph 1 of the FAC, Defendant is presently without sufficient knowledge or information to either admit or deny the allegations contained in said Paragraph and therefore denies each and every allegation contained in Paragraph 1.

2. Defendant admits Paragraph 2 of the FAC.

3. Answering Paragraph 3 of the FAC, Defendant states that these allegations are legal conclusions and/or procedural statements that require no answer, but to the extent they contain factual allegations, Defendant admits each and every such factual allegation contained in Paragraph 3 of the FAC.

4. Answering Paragraph 4 of the FAC, Defendant states that these allegations are legal conclusions and/or procedural statements that require no answer, but to the extent they



1 contain factual allegations, Defendant admits each and every such factual allegation contained in  
2 Paragraph 4 of the FAC.

3 5. Defendant denies each and every allegation contained in Paragraph 5 of the FAC.

4 6. Answering Paragraph 6 of the FAC, Defendant states that these allegations are  
5 legal conclusions and/or procedural statements that require no answer, but to the extent they  
6 contain factual allegations, Defendant admits each and every such factual allegation contained in  
7 Paragraph 3 of the FAC.

8 7. Answering Paragraph 7 of the FAC, Defendant is presently without sufficient  
9 knowledge or information to either admit or deny the allegations contained in said Paragraph and  
10 therefore denies each and every allegation contained in Paragraph 7.

11 8. Answering Paragraph 8 of the FAC, Defendant states that these allegations are  
12 legal conclusions and/or procedural statements that require no answer, but to the extent they  
13 contain factual allegations, Defendant is presently without sufficient knowledge or information to  
14 either admit or deny the allegations contained in said Paragraph and therefore denies each and  
15 every allegation contained in Paragraph 8.

16 9. Answering Paragraph 9 of the FAC, Defendant states that these allegations are  
17 procedural statements that require no answer, but to the extent they contain factual allegations,  
18 Defendant denies each and every such factual allegation contained in Paragraph 9 of the FAC.

19 10. Answering Paragraph 10 of the FAC, Defendant admits that Plaintiff is an African  
20 American man and is without sufficient knowledge or information to either admit or deny the  
21 other allegations contained in said Paragraph and therefore denies each and every other allegation  
22 contained in Paragraph 10.

23 11. Defendant denies each and every allegation contained in Paragraph 11 of the FAC.

24 12. Answering Paragraph 12 of the FAC, Defendant is presently without sufficient  
25 knowledge or information to either admit or deny the allegations contained in said Paragraph and  
26 therefore denies each and every allegation contained in Paragraph 12.

27 13. Defendant denies each and every allegation contained in Paragraph 13 of the FAC.

28 14. Defendant denies each and every allegation contained in Paragraph 14 of the FAC.



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- 1           15. Defendant denies each and every allegation contained in Paragraph 15 of the FAC.
- 2           16. Defendant denies each and every allegation contained in Paragraph 16 of the FAC.
- 3           17. Defendant denies each and every allegation contained in Paragraph 17 of the FAC.
- 4           18. Defendant denies each and every allegation contained in Paragraph 18 of the FAC.
- 5           19. Defendant denies each and every allegation contained in Paragraph 19 of the FAC.
- 6           20. Defendant denies each and every allegation contained in Paragraph 20 of the FAC.
- 7           21. Defendant denies each and every allegation contained in Paragraph 21 of the FAC.
- 8           22. Defendant denies each and every allegation contained in Paragraph 22 of the FAC.
- 9           23. Answering Paragraph 23 of the FAC, Defendant is presently without sufficient
- 10 knowledge or information to either admit or deny the allegations contained in said Paragraph and
- 11 therefore denies each and every allegation contained in Paragraph 23.
- 12           24. Defendant denies each and every allegation contained in Paragraph 24 of the FAC.
- 13           25. Defendant denies each and every allegation contained in Paragraph 25 of the FAC.
- 14           26. Defendant denies each and every allegation contained in Paragraph 26 of the FAC.
- 15           27. Defendant denies each and every allegation contained in Paragraph 27 of the FAC.
- 16           28. Defendant denies each and every allegation contained in Paragraph 28 of the FAC.
- 17           29. Defendant denies each and every allegation contained in Paragraph 29 of the FAC.
- 18           30. Defendant denies each and every allegation contained in Paragraph 30 of the FAC.
- 19           31. Defendant denies each and every allegation contained in Paragraph 31 of the FAC.
- 20           32. Defendant denies each and every allegation contained in Paragraph 32 of the FAC.
- 21           33. Defendant denies each and every allegation contained in Paragraph 33 of the FAC.
- 22           34. Defendant denies each and every allegation contained in Paragraph 34 of the FAC.
- 23           35. Defendant denies each and every allegation contained in Paragraph 35 of the FAC.
- 24           36. Defendant denies each and every allegation contained in Paragraph 36 of the FAC.
- 25           37. Defendant denies each and every allegation contained in Paragraph 37 of the FAC.
- 26           38. Defendant denies each and every allegation contained in Paragraph 38 of the FAC.
- 27           39. Defendant denies each and every allegation contained in Paragraph 39 of the FAC.
- 28           40. Defendant denies each and every allegation contained in Paragraph 40 of the FAC.



1 41. Defendant denies each and every allegation contained in Paragraph 41 of the FAC.

2 42. Defendant denies each and every allegation contained in Paragraph 42 of the FAC.

3 43. Answering Paragraph 43 of the FAC, Defendant states that these allegations are  
4 procedural statements that require no answer, but to the extent they contain factual allegations,  
5 Defendant denies each and every such factual allegation contained in Paragraph 43 of the FAC.

6 44. Answering Paragraph 44 of the FAC, Defendant states that these allegations are  
7 procedural statements and/or legal conclusions that require no answer, but to the extent they  
8 contain factual allegations, Defendant denies each and every such factual allegation contained in  
9 Paragraph 44 of the FAC.

10 45. Answering Paragraph 45 of the FAC, Defendant states that these allegations are  
11 procedural statements and/or legal conclusions that require no answer, but to the extent they  
12 contain factual allegations, Defendant denies each and every such factual allegation contained in  
13 Paragraph 45 of the FAC.

14 46. Defendant denies each and every allegation contained in Paragraph 46 of the FAC.

15 47. Defendant denies each and every allegation contained in Paragraph 47 of the FAC.

16 48. Defendant denies each and every allegation contained in Paragraph 48 of the FAC.

17 49. Defendant denies each and every allegation contained in Paragraph 49 of the FAC.

18 50. Defendant denies each and every allegation contained in Paragraph 50 of the FAC.

19 51. Defendant denies each and every allegation contained in Paragraph 51 of the FAC.

20 52. Defendant denies each and every allegation contained in Paragraph 52 of the FAC.

21 53. Defendant denies each and every allegation contained in Paragraph 53 of the FAC.

22 54. Answering Paragraph 54 of the FAC, Defendant states that these allegations are  
23 procedural statements that require no answer, but to the extent they contain factual allegations,  
24 Defendant denies each and every such factual allegation contained in Paragraph 54 of the FAC.

25 55. Answering Paragraph 55 of the FAC, Defendant states that these allegations are  
26 procedural statements and/or legal conclusions that require no answer, but to the extent they  
27 contain factual allegations, Defendant denies each and every such factual allegation contained in  
28 Paragraph 55 of the FAC.



1           56.     Answering Paragraph 56 of the FAC, Defendant states that these allegations are  
2 procedural statements and/or legal conclusions that require no answer, but to the extent they  
3 contain factual allegations, Defendant admits each and every such factual allegation contained in  
4 Paragraph 56 of the FAC.

5           57.     Defendant denies each and every allegation contained in Paragraph 57 of the FAC.

6           58.     Defendant denies each and every allegation contained in Paragraph 58 of the FAC.

7           59.     Defendant denies each and every allegation contained in Paragraph 59 of the FAC.

8           60.     Defendant denies each and every allegation contained in Paragraph 60 of the FAC.

9           61.     Defendant denies each and every allegation contained in Paragraph 61 of the FAC.

10          62.     Defendant denies each and every allegation contained in Paragraph 62 of the FAC.

11          63.     Answering Paragraph 63 of the FAC, Defendant states that these allegations are  
12 procedural statements that require no answer, but to the extent they contain factual allegations,  
13 Defendant denies each and every such factual allegation contained in Paragraph 63 of the FAC.

14          64.     Answering Paragraph 64 of the FAC, Defendant states that these allegations are  
15 procedural statements and/or legal conclusions that require no answer, but to the extent they  
16 contain factual allegations, Defendant denies each and every such factual allegation contained in  
17 Paragraph 64 of the FAC.

18          65.     Defendant denies each and every allegation contained in Paragraph 65 of the FAC.

19          66.     Defendant denies each and every allegation contained in Paragraph 66 of the FAC.

20          67.     Defendant denies each and every allegation contained in Paragraph 67 of the FAC.

21          68.     Defendant denies each and every allegation contained in Paragraph 68 of the FAC.

22          69.     Defendant denies each and every allegation contained in Paragraph 69 of the FAC.

23          70.     Defendant denies each and every allegation contained in Paragraph 70 of the FAC.

24          71.     Defendant denies each and every allegation contained in Paragraph 71 of the FAC.

25          72.     Defendant denies each and every allegation contained in Paragraph 72 of the FAC.

26          73.     Answering Paragraph 73 of the FAC, Defendant states that these allegations are  
27 procedural statements that require no answer, but to the extent they contain factual allegations,  
28 Defendant denies each and every such factual allegation contained in Paragraph 73 of the FAC.



1           74.     Answering Paragraph 74 of the FAC, Defendant states that these allegations are  
2 procedural statements and/or legal conclusions that require no answer, but to the extent they  
3 contain factual allegations, Defendant denies each and every such factual allegation contained in  
4 Paragraph 74 of the FAC.

5           75.     Answering Paragraph 75 of the FAC, Defendant states that these allegations are  
6 procedural statements and/or legal conclusions that require no answer, but to the extent they  
7 contain factual allegations, Defendant denies each and every such factual allegation contained in  
8 Paragraph 75 of the FAC.

9           76.     Answering Paragraph 76 of the FAC, Defendant states that these allegations are  
10 procedural statements and/or legal conclusions that require no answer, but to the extent they  
11 contain factual allegations, Defendant denies each and every such factual allegation contained in  
12 Paragraph 76 of the FAC.

13           77.     Defendant denies each and every allegation contained in Paragraph 77 of the FAC.

14           78.     Defendant denies each and every allegation contained in Paragraph 78 of the FAC.

15           79.     Defendant denies each and every allegation contained in Paragraph 79 of the FAC.

16           80.     Defendant denies each and every allegation contained in Paragraph 80 of the FAC.

17           81.     Defendant denies each and every allegation contained in Paragraph 81 of the FAC.

18           82.     Defendant denies each and every allegation contained in Paragraph 82 of the FAC.

19           83.     Defendant denies each and every allegation contained in Paragraph 83 of the FAC.

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**AFFIRMATIVE DEFENSES****FIRST AFFIRMATIVE DEFENSE**

Defendant does not admit any of Plaintiff's allegations except as specifically set forth above. For the purposes of this Affirmative Defense only, Defendant alleges that Plaintiff's FAC fails to state claims upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

To the extent Plaintiff's FAC may seek punitive damages, Plaintiff has failed to state facts sufficient to justify an award of punitive damages for any of the claims for relief or injunctive and declaratory relief asserted in the FAC.

**THIRD AFFIRMATIVE DEFENSE**

To the extent Plaintiff's FAC may seek punitive damages, such claims may violate the procedural and substantive due process rights guaranteed to Defendant under the United States Constitution and the Constitution of the State of Nevada.

**FOURTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's FAC may seek punitive damages, such damages are unavailable inasmuch as Defendant did not engage in intentional discrimination with malice or reckless indifference to any federally protected rights of Plaintiff as required by *Kolstad v. American Dental Assoc.*, 527 U.S. 526, 535 (1999).

**FIFTH AFFIRMATIVE DEFENSE**

Any claim for punitive and/or exemplary damages is barred because Plaintiff failed to plead the matter with requisite particularity.

**SIXTH AFFIRMATIVE DEFENSE**

The damages sustained by Plaintiff, if any, were proximately caused by his own willful acts, negligence or omissions.



**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred, in whole or in part, because the injuries and damages claimed by Plaintiff resulted from acts and/or omissions of persons other than Defendant or its authorized agents.

**EIGHTH AFFIRMATIVE DEFENSE**

Any award of damages is barred, in whole or in part, by Plaintiff's failure to undertake reasonable efforts to mitigate his damages.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the exclusive remedy provisions of the Nevada Industrial Insurance Act.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the Nevada Supreme Court's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005).

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because any actions taken by Defendant were proper, legitimate, justified, reasonable, and based upon good faith and were not motivated by hate, malice, or ill- will, or with the deliberate intent to injure Plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because any actions which are alleged to be the result of discrimination and/or retaliatory animus would still have been made or taken without any consideration of Plaintiff's race.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because any actions taken regarding Plaintiff were job-related and consistent with business necessity.



**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because he did not endure conduct that was sufficiently severe or pervasive to alter the terms and conditions of his employment.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred due to his unreasonable failure to promptly utilize Defendant's internal reporting procedures and his failure to advise Defendant of his complaints.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred due to the prompt and remedial action taken by Defendant to address any alleged discriminatory, harassing or retaliatory behavior reported by Plaintiff.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory, harassing or retaliatory behavior.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because there is no nexus between any alleged protected activities of Plaintiff and any alleged adverse employment actions he suffered.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred due to the applicable statute of limitations.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because he was not treated differently than similarly situated employees.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because he cannot satisfy the necessary elements to establish racial discrimination and racial harassment.



**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because Defendant did not engage in any willful or reckless conduct.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's statutory claims are barred because any discipline or alleged adverse employment actions were based upon reasonable factors other than race.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's racial discrimination and racial harassment claims brought under federal and state law are barred because any alleged comments which may have been made concerning Plaintiff's race constitute stray remarks and thus are not actionable.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because Defendant's conduct at all times was privileged in that Defendant was at all times engaged in conduct within his rights and did so in a permissible way, and said privilege was not, at any time, abused.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's FAC is barred because the alleged actions of which Plaintiff complains were not within the scope of his employment.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Any damages sustained by Plaintiff, if any, were not actually or proximately caused by any act or omission of Defendant.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for negligent retention and supervision are barred as a matter of law because Defendant properly trained and supervised its employees.



**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Defendant did not breach any duty owed to Plaintiff.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, due to the doctrines of unclean hands and/or waiver.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to exhaust his administrative remedies.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

As a separate and affirmative defense to the FAC, Defendant alleges that it took all affirmative steps to prevent discrimination, harassment, and/or retaliation, if any, from occurring in the workplace, and that Plaintiff was not subject to any discrimination, harassment, and/or retaliation.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

As a separate and affirmative defense to the FAC, Defendant alleges that Plaintiff's FAC, and each of the causes of action contained therein, is barred in whole or in part, because Defendant exercised reasonable care to prevent and correct any improper behavior and Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to avoid harm.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

As a separate and affirmative defense to the FAC, Defendant alleges that Plaintiff's statutory and/or common law claims provide duplicative relief and Plaintiff is not entitled to double recovery.



**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

The nature of the claims asserted by Plaintiff under cover of his FAC is not specific and is vague and ambiguous. Because Plaintiff has not provided Defendant with specific information regarding his FAC, Defendant reserves its right to amend its Answer to assert any applicable, additional, or other defenses constituting an avoidance or affirmative defense at such time as the nature of Plaintiff's claims and the facts relating to them are revealed to Defendant.

WHEREFORE, Defendants prays:

1. That Plaintiff take nothing by way of his FAC;
2. For judgment in favor of Defendant and against Plaintiff;
3. That Defendant be awarded all costs and expenses incurred;
4. That Defendant be awarded its reasonable attorneys' fees; and
5. For such other and further relief as the Court may deem just and proper.

Dated: July 23, 2021

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ Robert Rosenthal

Robert Rosenthal, Esq.

Martin A. Little, Esq.

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

*Attorneys for Defendant M.J. Dean  
Construction, Inc.*



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed and served upon the following parties on July 23, 2021 through the Court's ECF system.

Law Office of Daniel Marks  
Daniel Marks, Esq.  
Nicole M. Young, Esq.  
610 South Ninth Street  
Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

/s/ Barbara Dunn  
Howard & Howard Attorneys PLLC

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